Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	
Competition in the Market for the	)	MB Docket No. 05-255
Delivery of Video Programming	)	

NOTICE OF INQUIRY

Adopted: August 9, 2005 **Released: August 12, 2005**

Comment Date: September 19, 2005
Reply Comment Date: October 3, 2005

By the Commission: Commissioners Copps and Adelstein issuing separate statements.

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I. INTRODUCTION

1. Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to report to Congress annually on the status of competition in the market for the delivery of video programming.[1] This Notice of Inquiry (*Notice*) solicits data and information on the status of competition in the market for the delivery of video programming for our twelfth annual report (2005 Report).[2] We request information, comments, and analyses that will allow us to evaluate the status of competition in the video marketplace, changes in the market since the *2004 Report*, prospects for new entrants to that market, factors that have facilitated or impeded competition, and the effect these factors are having on consumers' access to video programming.[3]

2. We ask commenters to provide data on video programming distributors, including cable systems, direct broadcast satellite (DBS) services, large home satellite or C-Band dish (C-Band) providers, broadband service providers (BSPs), private cable or satellite master antenna television (PCO) systems, open video systems (OVS), multichannel multipoint distribution or wireless cable systems (wireless cable), local exchange carrier (LEC) systems, utility-operated systems, and over-the-air broadcast television stations. We seek information on video programming distributed on videocassettes and DVDs through retail distribution outlets, over the Internet and via Internet Protocol (IP) networks. We also seek information that will allow us to evaluate horizontal concentration in the video marketplace, vertical integration between programming distributors and programming services, and other issues relating to the programming available to consumers. We request information on technical issues, including equipment and emerging services. We continue to seek comments regarding developments in foreign markets, as they may contribute to our understanding of domestic markets and provide insight into factors affecting video competition. Where possible and relevant, we request data as of June 30, 2005.

3. The accuracy and usefulness of the *Report* and its findings is directly related to the quality of the data and information we receive from commenters that respond to this *Notice*. We encourage thorough and substantive submissions from industry participants and state and local regulators with the best knowledge of the questions and issues raised. We will augment reported information with submissions in other Commission proceedings. In the past, we have had to rely on data from publicly available sources when information has not been provided directly by industry participants. The Commission intends to seek out publicly available information relevant to this inquiry. We are concerned, nevertheless, that such publicly available data may not be adequate to gain a full understanding of the state of competition in the video marketplace, especially when various sources provide inconsistent data. Thus, it is extremely important for us to receive complete and accurate information directly from industry sources.

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[1] Communications Act of 1934, as amended (Communications Act), § 628(g), 47 U.S.C. § 548(g).

[2] This Notice is not intended to express any Commission views, or to prejudice the outcome of any Commission proceeding, but only to elicit information and data for purpose of this Report to Congress.

[3] *Implementation of Section 19 of the 1992 Cable Act (Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming)*, 20 FCC Rcd 2755 (2005) (*2004 Report*). *See also Reports*, 1994-2002: 9 FCC Rcd 7442 (1994) (*1994 Report*); 11 FCC Rcd 2060 (1996) (*1995 Report*); 12 FCC Rcd 4358 (1997) (*1996 Report*); 13 FCC Rcd 1034 (1998) (*1997 Report*); 13 FCC Rcd 24284 (1998) (*1998 Report*); 15 FCC Rcd 978 (2000) (*1999 Report*); 16 FCC Rcd 6005 (2001) (*2000 Report*); 17 FCC Rcd 1244 (2002) (*2001 Report*); 17 FCC Rcd 26901 (2002) (*2002 Report*); 19 FCC Rcd 1606 (2004) (*2003 Report*).

II. MATTERS ON WHICH COMMENT IS REQUESTED

A. Competition in the Market for the Delivery of Video Programming

4. We seek a broad range of information and statistical data pertaining to video distribution technologies and the programming available to consumers. To elicit useful information for our assessment of the video marketplace, we raise a significant number of questions in this section. We ask commenters to address as many of these questions as possible. We reiterate the importance of receiving this information directly from industry participants for an accurate and complete report.

5. *General Statistical Data*: We seek information and statistical data for each type of multichannel video programming distributor (MVPD), including:

- the number of homes passed by each wired technology;
- the number of homes capable of receiving service via each wireless technology;[4]
- the number of subscribers and penetration rates for each service (*e.g.*, basic cable service, cable programming service tier or "CPST," premium, or their equivalents provided by non-cable MVPDs, pay-per-view, video-on-demand (VOD));
- channel capacities and the number, type, and identity of video programming channels offered, the channel capacity required for such offerings, and the available channel capacity of the system;
- prices charged for various programming packages;
- cost of programming inputs;
- industry and individual firm financial information, such as total revenue and revenue by individual company segments or services, cash flow, and expenditures;
- information on how video programming distributors compare in terms of relative size and financial resources;
- data that measure the audience reach of video programming distribution firms as well as relative control over the video distribution market;
- information on video distributor expansion into new markets such as local telephony and high-speed-Internet access, the percentage of subscribers taking these services, and the competitive advantages of offering these services; and
- information on new technologies being considered, tested, or deployed by MVPDs for video, voice and data.

6. *Head-to-Head Competition:* Most consumers can receive video programming from broadcast television stations over the air, one cable provider, at least two DBS providers, and, in limited cases, a wireline overbuilder or other delivery technology. We are interested in data and information on the number of homes capable of choosing among multichannel video program distribution (MVPD)

[4] This includes the number of line-of-sight homes for distribution technologies that require line of sight for reception.

services. How many households can receive service from one or more providers (*e.g.*, DBS, wireless cable, PCO) as well as an incumbent cable provider? We are aware that the number of consumers with access to a wireline overbuilder (*e.g.*, a LEC, BSP, OVS provider) is relatively low. We seek comments and data on the number of consumers with access to wireline overbuilders, such as the number of homes passed by more than one wireline MVPD, and why the availability is low relative to wireless alternatives. As part of this request, we want to identify markets where wireline competition exists today, where entry is likely in the near future, and where wireline competition once existed but failed. Are there characteristics that make a particular area more likely to support head-to-head wireline competition?

7. We seek comments and information on the consequences for consumers of competition in the market for video programming. Has competition among MVPD services resulted in lower prices, more programming choices, better quality of service, more advanced services (both video and non-video) or other consumer benefits? Is there evidence of price competition? How should we interpret the fact that the average monthly cable rate has risen faster than the general inflation rate? FCC data indicate that the average monthly rate cable subscribers are charged for the combined basic and CPST service tiers rose from $27.77 in 1998 to $41.04 in 2004, with an average rate of change of 7.4 percent during that period.[5] The cost of the CPST alone increased at an average rate of 10.4 percent, from $15.77 to $27.24. Meanwhile, the average rate of change in the Consumer Price Index was 2.1 percent during that period. FCC data indicate that the average number of channels offered on the combined basic and CPST service tiers rose from 50.3 to 70.3 between 1998 and 2004.[6] Is there evidence that cable subscribers demand and benefit from these additional channels, even at the cost of higher monthly bills? How many channels on average do consumers actually watch? Would the availability of themed tiers spur competition by giving consumers a greater selection of price points and more control over the programming they receive?

8. We also ask whether the effect of competition varies depending upon the nature of the competitors. In particular, we seek data on relative prices in order to evaluate substitution between MVPD technologies (*i.e.*, what are the prices of similar cable, DBS, LEC, OVS and BSP services). In addition, we are interested in investigating methods for measuring and comparing prices for products that vary in quality (*e.g.*, how to compare the price of a 50-channel package with the price of a 30-channel package). Also, how should we compare bundled service packages, such as video, voice, and high-speed data, among MVPDs?

9. We seek comment on marketing of MVPD services, especially the nature and extent of promotional discounts or other incentives offered to win or retain customers, the prevalence of bundled service offerings, and how these practices compare to markets in which the only competition is between cable and DBS. We also request information on the number of customers switching from one technology to another and the factors responsible for consumers' decision to switch among MVPDs as well as the percentage of those customers that drop MVPD service altogether.[7] What effect does the offering of discounted equipment with a service contract as opposed to leasing the equipment have on customers' choice of MVPD provider? In addition, what effect does a 12 month or longer service contract, such as those offered by DBS providers, have on the movement of consumers among MVPD competitors? What effect does the availability of cable navigation devices at retail have on these decisions by consumers?

[5] *See Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, 20 FCC Rcd 2718, 2737, Attachment 4 (2005) (*2004 Price Survey*).

[6] *Id.*

[7] Last year, we noted that one analyst found that concern over the cost of switching from cable to DBS service disappeared when consumers moved their residence. *2004 Report*, 20 FCC Rcd at 2793 ¶ 54 n.299.

10. *Barriers to Entry and Impact of Regulatory Environment*: Are there barriers to entry in the market for the delivery of video programming? Are there any existing Commission regulations or statutory provisions that prevent new entrants from promptly deploying their networks and offering consumers new video service options? To what extent, if any, does the current regulatory regime discourage investment in broadband networks over which video services may be delivered? Are there steps that Congress and the Commission may take to encourage investment in new broadband networks? Are there specific actions that Congress and the Commission may take to reduce barriers to competition in the video market and increase consumer choice? What types of changes may be made to particular regulations or statutes to foster greater competition in the deployment of broadband networks and the provision of video services? Do any statutes or regulations create an uneven playing field for the distribution of video programming? What developments have occurred in the past year that affect or will affect the ability of MVPDs to gain access to programming networks, rights-of-way, pole attachments, conduits, and ducts for the delivery of their services to consumers? What effects do existing Commission regulations and other provisions of law specific to video competition have on the market? What regulatory changes, if any, have facilitated or hindered head-to-head competition in local markets between or among video programming distributors? Are there regulatory or statutory factors influencing the ability of providers to include new services along with more traditional television programming? What is the impact of the local franchise process on new entrants into local markets? Does it slow down the entry of new providers?

11. We seek information on changes in the nature of competition following a Commission determination that a cable operator faces effective competition in a franchise area. How does the finding change the behavior and performance of incumbents and competitors? Do competitors' market shares continue to grow? What happens to a cable operator's level of marketing and its pricing promotions? Are there changes in the composition or prices of video programming packages? Do prices or other competitive behaviors vary within the franchise area? In terms of company operations, are there changes in the number of customer service representatives or field technicians? How do the responses of incumbents and competitors differ?

12. *Programming Services:* We seek information on existing, planned, and terminated or merged programming services to assess the changes over the past year in the amount and type of video programming that is available to consumers. We request detailed information about programming networks including ownership, the type of programming services (*e.g.*, national, regional, local) and the genre of programming services (*e.g.*, sports, news, children's, general entertainment, and foreign language). Furthermore, we request information on the transmission format of each service (*i.e.*, analog, standard digital (SD), or high definition (HD)). Are some services offered in multiple formats at different video resolutions?

13. We have reported that, over the past several years, the percent of non-broadcast programming networks affiliated with cable operators has generally declined.[8] Does this trend continue? We also seek information on the nature of trends in the status of programming networks' vertical integration with cable operators and with other media interests. How many, and which, networks do DBS, cable, and other MVPDs, broadcast networks, and broadcast stations own? How many regional networks are there and who owns them? How many regional networks are vertically integrated with a cable operator, DBS operator, or other video distributor? How many are satellite delivered and how many are delivered terrestrially? We also seek information on the number of independent networks that launched in the past year, including total subscribers, the distributors that carry them, and their ongoing efforts to obtain further distribution by cable, DBS, and other service providers.

[8] *2004 Report*, 20 FCC Rcd at 2832 ¶ 145.

14. Furthermore, we seek information on several specific types of programming. We request information on the extent to which locally-originated programming is delivered to consumers, by broadcasters and MVPDs, and the factors affecting the production and availability of locally-originated programming. Additionally, to what extent do video programming distributors provide children's programming, and local news and community affairs programming? To what extent is programming offered in languages other than English, both at the national and local levels, on all video distribution platforms, and to what extent is such programming produced originally in a language other than English? Are there any exclusivity arrangements that implicate the availability of such programming for other distributors? We also seek comment regarding public, educational, and governmental (PEG) access and leased access channels, including the number of channels currently being used by cable operators for each of these purposes and the types of programming offered on such channels. What percent of cable systems allocate channels for PEG access? In addition, we request information on the programming provided by DBS operators in compliance with the public interest obligation that requires them to reserve four percent of their channel capacity for "noncommercial programming of an educational or informational nature."[9]

15. We further request information on the ability of programming networks to sell their services. Specifically, we seek comment on programmers' access to MVPDs and their ability to gain carriage. We request comment regarding any difficulties programming networks encounter when launching a new service. Is carriage by one or more of the largest MVPDs necessary for the successful launch of a new programming network? To what extent do start-up programming networks find it necessary to forgo license fees or offer launch fees, equity stakes, or exclusive carriage arrangements in order to secure MVPD carriage? Are new networks facing difficulty gaining carriage in either analog or digital format? Is the success of a new programming service dependent on the tier of service on which it is placed? With the accelerating rollout of video-on-demand platforms, are new networks finding they must demonstrate demand for their service through VOD before they can negotiate for placement on analog or digital programming tiers? To what extent do new programming services that provide a genre of programming already offered by a competing and established network have difficulty obtaining carriage? With the increase in MVPDs' channel capacities and the creation of digital tiers on cable, is channel capacity still a barrier to obtaining distribution? How much channel capacity is available on the analog tier, and how does this affect the economics of new programming services? Are programming services being developed strictly for digital tiers?

16. *Program Packaging:* We seek information on how video programming distributors package and market their programming. To what extent are cable operators or other video programming providers seeking to establish themed tiers, such as sports tiers or family tiers? To what extent do MVPDs offer or plan to offer consumers more choice in channel selection rather than traditional tiering of programming services? We seek information on the programming composition and pricing of such new options.[10] We request comment on the advantages and disadvantages of offering programming in packages other than the traditional bundling of many networks. Have programming networks been moved from premium to expanded basic, or vice versa, or moved from expanded basic to digital tiers, and why? What are the factors and criteria that providers consider in allocating programming to digital tiers? What are the economic, legal, or other factors that affect a video programming distributor's decisions on program packaging?

[9] *See Implementation of Section 25 of the Cable Television and Consumer Protection Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, 13 FCC Rcd 23254 (1998).

[10] In November 2004, the Media Bureau released a report on the efficacy of a la carte pricing. *See Report on the Packaging and Sale of Video Programming Services to the Public*, Media Bureau, Nov. 18, 2004 (*2004 Program Packaging Report*).

17. *MVPD Access to Programming:* Major cable multiple system operators (MSOs), such as Comcast, Time Warner, and Cablevision, and DBS providers, such as News Corp.'s DIRECTV, own numerous major programming networks.[11] We seek to assess the extent to which video programming distributors are and have been able to acquire or license programming owned by other video distributors. What effect does vertical integration have on other video distributors' abilities to obtain programming? To what extent are non-cable MVPDs producing their own programming or securing exclusive rights to certain programming services? What are the costs of producing or securing such programming, and have wireline overbuilders encountered any difficulty in doing so? How does exclusive or unique programming differentiate one MVPD from other video programming providers? Is there specific programming, national or regional/local, that is unavailable to either cable or non-cable operators and, if so, why? How has this changed over the past year? How many and what type of programming networks are delivered terrestrially? Are such networks available to competing MVPDs? How do these various factors affect an MVPD's ability to compete?

18. We seek comment on video programming distributor access to particular genres of programming. Are there certain "must-have" programming services,[12] or genres of services (*e.g.*, movie, sports, or news channels) without which competitive video service providers may find themselves unable to compete effectively? If so, which services or categories of services are involved and to what extent are there substitute services? We ask commenters to indicate whether such programming is available to competitive video programmers and, if possible, to indicate the reason such programming is, or has been previously, unavailable. In previous years, MVPDs that compete with incumbent cable operators have asserted that they have difficulty obtaining access to what they consider "must-have" locally-originated programming (*e.g.*, regional sports or news networks), which are often owned by, or affiliated with, cable operators. In addition, in the context of our review of News Corp.'s acquisition of Hughes Electronics Corporation, MVPDs raised similar concerns about regional sports networks (RSNs) affiliated with or owned by News Corp.[13] Has the situation changed, or is gaining access to such programming still difficult? We request data on exclusive contracts for all types of programming, which would allow an analysis of the trends and competitive effects of exclusive contracts for national, regional, and local programming.

19. *Program Access Issues:* We request comment on the effectiveness of our program access,[14] program carriage,[15] and channel occupancy rules.[16] We ask commenters to provide information

[11] For example, Comcast owns non-broadcast networks such as E! Entertainment Television and Outdoor Life Network; Time Warner owns non-broadcast networks CNN and TNT; and News Corp. owns non-broadcast networks FX and National Geographic Channel. *See 2004 Report*, 20 FCC Rcd at 2874, Appendix C, Table C-1.

[12] Some MVPDs indicate that there are certain programming services that they "must-have" to attract subscribers and be able to compete. Such services include, but are not limited to, regional sports and news networks, and local broadcast stations. *See, e.g., 2004 Report*, 20 FCC Rcd at 2837 ¶¶ 157-59. *See also General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, Consolidated Application For Authority to Transfer Control*, 19 FCC Rcd 473 (2004) (*News Corp/Hughes Order*).

[13] We found "the proposed transaction will enhance News Corp.'s incentive and ability to temporarily withhold or threaten to withhold access to its RSN programming to increase the fees it receives for the programming, over and above what it could negotiate absent the transaction, to the ultimate detriment of the public." *See News Corp/Hughes Order* 19 FCC Rcd at 543 ¶ 147. Because we found that neither our program access rules nor the applicants' program access commitments were sufficient to address this potential public interest harm, we required commercial arbitration where negotiations fail to produce a mutually acceptable set of prices, terms and conditions for carriage of an RSN. *News Corp/Hughes Order*, 19 FCC Rcd at 552-55 ¶¶ 172-79.

[14] 47 C.F.R. §§ 76.1004, 76.1507.

[15] 47 C.F.R. § 76.1301(c).

on the delivery technology used (*i.e.*, terrestrial or satellite) to distribute specific programming networks to MVPDs. What, if any, video programming services that were once delivered to MVPDs by satellite have been migrated to terrestrial delivery? How many newly launched networks are terrestrially delivered? To what extent are terrestrially-delivered programming services owned by, operated by, or affiliated with a programming distributor available to other video programming distributors? What exclusive programming arrangements exist between programmers and MVPDs? What incentives exist for programmers to grant exclusive rights to programming? With the advent of VOD, what are the competitive implications of video programming distributors securing exclusive rights to programming for inclusion in their VOD offerings?

20. *Access to Programming by Person with Disabilities:* We invite commenters to provide information regarding the accessibility of closed captioning and video description to persons with disabilities.[17] Under the Commission's rules, video programming distributors are currently required to provide at least 1,350 hours of captioned "new" programming on each channel during each calendar quarter.[18] In addition, a video programming distributor must include captioning in 30 percent of its "pre-rule" programming on each channel during each calendar quarter.[19] We seek information on the quality, accuracy, placement, technology, and any instances of missing or delayed captions. We also seek comment on the amount of digital programming that contains closed captions translated from analog closed captions.[20] What experiences have viewers had with captioning that falls behind the spoken words, or captioning that is cut off when scenes switch, when there are commercial breaks, or before a show has concluded? What issues arise with respect to the positioning of captioning on the television screen over the speaker's face, textual material being discussed, or the progress of a sporting event? Is captioning presented with the first showing of a program retained when the program is repeated? We especially seek information regarding real-time captioning of local newscasts, weather reports, and emergency information. We seek information on the level and quality of captioning for non-English language programming. Further, we request comment on the availability of video description, currently provided by programmers on a voluntary basis.[21] We request information regarding the amount and types of video

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[16] 47 C.F.R. § 76.504(a).

[17] We note that the Commission recently commenced a rulemaking proceeding addressing the current status of closed captioning and whether revisions should be made to the closed captioning rules. *See Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc. Petition for Rulemaking*, CS Docket No. 05-231, FCC 05-142 (rel. July 21, 2005).

[18] 47 C.F.R. § 79.1(b)(1) (phase-in schedule for captioning "new" programming, which is defined as programming first published or exhibited on or after January 1, 1998). Video programming first published or exhibited for display on television receivers equipped for display of digital transmissions or formatted for such transmission is defined as "new" as of July 1, 2002. 47 C.F.R. § 79.1(a)(6)(ii). *See Closed Captioning Requirements for Digital Television Receivers, Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, 15 FCC Rcd 16788, 16808-09 ¶ 60 (2000) (*Digital Captioning Order*). As of January 1, 2006, 100 percent of all new, nonexempt video programming must be provided with captions. 47 C.F.R. § 79.1(b)(iv).

[19] 47 C.F.R. § 79.1(b)(2) (phase-in schedule for "pre-rule" programming which is defined as programming first published or exhibited before January 1, 1998).

[20] Tra on uses the original NTSC line 21 608 format captions (*i.e.*, analog captions) and generates 708 format captio *See* Electronics Industries Association, *Digital Television Closed Captioning*, EIA-708-B, 1999.

[21] In August 2000, the Commission adopted rules requiring certain larger broadcasters and video programming distributors to include "video descriptions" with a small amount of their programming to increase their accessibility to persons with visual disabilities. *See Implementation of Video Description of Video Programming*, 15 FCC Rcd 15230 (2000), on recon., 16 FCC Rcd 1251 (2001). On November 8, 2002, the U.S. Court of Appeals for the D.C.

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programming that includes video description and whether MVPDs generally carry video descriptions inserted by programmers.

21. *Consumer Equipment:* We seek comment on the availability and compatibility of customer premises equipment used to provide video programming and other services. We request information on the number of households that currently have analog television sets and the number of those television sets that are connected to an external set-top box that allows for the provision of various MVPD services. We seek information on the number of these set-top boxes that only provide analog services and the number that provide different types of digital service, *i.e.*, those that decode and display high definition signals, those that decode high definition signals but display all signals only in standard definition digital or analog formats, and those that display and decode only standard definition signals. Also, we are interested in how many digital set-top boxes are capable of tuning and delivering analog cable channels to attached televisions. Similarly, we request information on the number of households that have digital television sets and the number of those sets that are connected to set-top boxes for each type of service provided by such boxes. How many of these MVPD set-top boxes also contain cable modems or IP telephony interfaces and how are such modems or interfaces priced? How many contain digital video recorder (DVR) capabilities and how are these services priced? To what extent is customer premises equipment capable of providing video programming on an a la carte basis and is any video programming provider offering this service?

22. We seek information on the retail availability of navigation devices to consumers.[22] How many such devices have been sold? What are the obstacles to equipment manufacturers and others for obtaining approval to attach devices to MVPD systems? To what extent, if any, do subscriber agreements attempt to limit the uses that may be made of customer premises equipment? How does customer premises equipment design, function, and/or availability affect consumer choice and competition between firms in the video programming market? We request information on the development and deployment of electronic programming guides (EPGs), including the number and type of EPGs that video programming distributors offer or plan to offer to their subscribers, and the technologies used to distribute EPGs. What relationships or partnerships exist between video providers and developers of EPGs? To what extent are EPGs affiliated with a video programming distributor available to competitors? Do exclusive agreements covering EPGs affect competition in the video programming market? To what extent do video programming subscribers have access to EPGs that are unaffiliated with their video provider?

23. *Rural and Smaller Markets:* We continue to monitor competition issues specific to video programming distribution in rural and smaller markets.[23] How does competition differ between rural and

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Circuit vacated the Commission's video description rules, finding that they exceeded the Commission's authority. *See Motion Picture Association of America v. FCC*, 309 F.3d 796 (D.C. Cir. 2002).

[22] Under the Commission's navigation rules, video programming distributors (except DBS) were required to separate security functions from non-security functions by July 1, 2000, and make modular security components available by that date. *See Navigation Devices Order,* 13 FCC Rcd 14775. By July 1, 2007, MVPDs will no longer be allowed to offer conditional access and other functions in a single integrated device. *See Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, 20 FCC Rcd 6794 (2005) (*Navigation Second Report and Order*). *See also Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices* 18 FCC Rcd 20885 (2003) (*2003 Navigation Devices Second Report and Order and FNPRM*). *See also* 47 C.F.R. § 76.1204 (a)(1).

[23] In January 2005, the Commission initiated an inquiry on the impact on competition in the MVPD market of the current retransmission consent, network nonduplication, syndicated exclusivity, and sports blackout rules, including the impact of those rules on the ability of rural cable operators to compete with the direct broadcast satellite industry in the provision of digital broadcast television signals to consumers. *See* Public Notice, *Media Bureau Seeks*

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smaller markets and larger and urban areas? We are particularly interested in information on the experiences of independent cable system operators (*i.e.*, cable systems not affiliated with the largest MSOs). We seek information on the degree of upgrades of cable systems in rural and smaller markets. What percentage of systems have upgraded to 750 MHz or greater capacity? What percentage of small cable systems elect to provide digital tiers and services without upgrading? How does converting to a digital tier and not upgrading to a 750 MHz or greater capacity cable plant affect the system's competitiveness? We request information on the programming offered in rural and smaller markets and any differences between these offerings and those available in larger markets. Are there differences in programming costs for MVPDs providing service in smaller or rural markets compared to MVPDs in larger markets, and if so, what factors make it more or less expensive? What percentage of total expenses goes to acquiring programming? What advanced services are available in rural and smaller markets, including the availability of digital cable service, cable modem service, and VOD?

24. *Multiple Dwelling Units*: We seek comment on any factors that are unique to competition in multiple dwelling units (MDUs).[24] How many, or what percentage of, U.S. households are in MDUs? How common is it for consumers to have choices among video programming services within MDUs? We ask for comment on how access to buildings by providers, or lack of access, affects the number and types of competitive alternatives. Is the use of exclusive and so-called "perpetual" video service contracts in MDUs increasing or decreasing? What effects do the inside wiring,[25] over-the-air reception device (OTARD),[26] and cable ·· !k rate[27] rules have on MDU competition? How comparable are the program offerings and prices charged by video programming distributors serving MDUs to those of non-MDU customers in the surrounding area? Are video distributors providing advanced services, such as high-speed Internet access and telephony, to MDU customers?

25. *Technical Standards*: Do current technical rules and standards related to the provision of video services, such as the "plug-and-play" standards, provide a level playing field among competitors in the video delivery marketplace?[28] Are there specific actions with respect to the establishment of technical rules and standards that the Commission may take to foster greater competition among video service providers?

B. Cable Television Service

26. We seek to update our *Report* on the performance of the cable television industry. We request data and comments on the current state of competition in this segment of the video programming distribution market and any changes that have occurred in the state of competition since the *2004 Report*.

27. *System Upgrades and Channel Capacity*: We request information regarding the investments that cable operators have made to upgrade their plant and equipment to increase channel capacity, create digital services, or offer advanced services. We request information on the deployment of various types and technical methods to increase capacity. How is bandwidth allocated among analog and

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Comment for Inquiry Required by the Satellite Home Viewer Extension and Reauthorization Act on Rules Affecting Competition in the Television Marketplace, 20 FCC Rcd 1572 (2005).

[24] MDUs may include rental apartments, as well as condominiums and co-operatives.

[25] *See* 47 C.F.R. § 76.802 *et seq.*

[26] 47 C.F.R. § 1.4000.

[27] 47 U.S.C. § 543(d).

[28] *2003 Navigation Devices Second Report and Order and FNPRM*, 18 FCC Rcd 20885 (2003).

digital tiers and what factors influence that decision? How is bandwidth allocated among video and non-video services? To what extent are cable operators using digital tiers to offer analog services,[29] and to what extent are digital tiers used to distribute digital broadcast television (DTV) signals?

28. For individual MSOs, we request information on the number of systems upgraded, the channel capacity (as measured in terms of analog channel capacity) resulting from upgrades, the digital channel capacity resulting from upgrades (including the digital to analog compression ratio used), the number of systems with digital tiers, the number of households where digital cable services are available, and the number of subscribers to these digital services. Is increased channel capacity most often used for new programming, digital duplicates of existing analog services, digital hybrids modeled after an existing analog service with increased capabilities, digital derivatives or "multicasts" of established analog services, high-definition or multicast standard definition digital television from over-the-air broadcasters, or other services, including non-video services? To what extent is new capacity used for non-video services? What types of non-video services are being offered? How much of the capacity and bandwidth are dedicated to these services? We specifically seek the number of homes, if any, passed with systems having less than 36 activated channels.

29. We seek information on cable operators who have launched or plan to launch digital simulcasts of their analog channel lineups on one or more of their systems.[30] What effect do simulcasts have on channel capacity and the economics of programming networks? What are the prospects for, and what are the obstacles to, the development of cable facilities that rely exclusively on digital transmission techniques for the distribution of video programming? We seek comment on the benefits to consumers of an all-digital system. How would the structure and price of service tiers change if a system becomes all-digital? What are the implications for customer premises equipment?

30. *Cable Architecture Upgrades*: Last year, we reported on the Next Generation Network Architecture (NGNA), an undertaking by Comcast, Cox, and Time Warner to help transition to an all-digital network without undergoing expensive rebuilds.[31] We are interested in the progress of NGNA. We also request information on other architecture upgrades currently underway by these and other cable operators. Specifically, we are interested in deployments of fiber to the premises (FTTP), fiber to the node (FTTN), use of gigabit Ethernet in the backbone, and the expanded use of IP technology for program distribution.

31. *Ownership Transactions and Clustering:* We seek information on mergers and other cable system transactions during the past year, including the names of the buyer and seller, the date of the transaction, type of transaction (*i.e.*, sale, swap, or trade), name and location of the system, homes passed and number of subscribers, and the price. Have such transactions and consolidations been more likely to occur in certain types of markets, or between certain size systems? How many of these transactions involved the transfer of Cable Television Relay Service (CARS) licenses? How many did not involve the transfer of CARS licenses? How many new CARS links, including new licenses and modifications to existing licenses to add additional paths, are created as a result of consolidation and clustering? We continue to monitor the practice of clustering, whereby operators concentrate their operations in specific

[29] Cable operators use digital compression in order to transmit an increased number of analog services.

[30] Generally, cable operators deliver a combination of analog and digital signals. A digital simulcast involves the digitization of the analog tier of programming at the operator's headend. The all-digital signal is then delivered alongside the analog signal.

[31] *2004 Report*, 20 FCC Rcd at 2856 ¶ 200.

geographic areas.[32] We request data regarding the effect of clustering by cable operators on competition in the video programming distribution market. How many transactions resulted in an MSO establishing a new presence in an area versus adding to an existing cluster? As headends are eliminated and systems become technically integrated, what regulatory and technical issues arise to affect competition? What effect does clustering have on economies of scale and scope vis-à-vis competition with overbuilders? We seek comment on the acquisition of PCO systems by major MSOs, and the effect on competition in the market.

32. *Program Packaging:* We seek comment on whether cable operators are changing the way they package programming. Are cable operators restructuring their tiers by shifting programming from the basic service tier (BST) to cable programming service tier (CPST) or from these tiers to digital or premium tiers? To what extent do cable operators offer multiple CPSTs or digital tiers? To what extent do they offer themed tiers, such as a family tier? Where cable operators provide digital tiers, are they creating additional digital programming genre packages (*e.g.*, family, sports, and lifestyle theme tiers) that require an additional subscription fee? We are interested in information on whether, and if so how, cable operators are restructuring their programming packages and tiers of service as a result of actual or potential competition.[33] We also seek information on how many cable subscribers subscribe only to basic tiers (*i.e.*, "lifeline" tiers). We seek comment on relevant trends in pricing of basic tiers.

33. *Advanced Services:* Collectively, cable operators have spent approximately $95 billion on upgrading their system platforms to offer more programming and advanced services.[34] Commenters are asked to provide information specific to the advanced service offerings by cable operators, including video-on-demand, digital video recorders, cable modem service, telephony, and Open Cable Applications Platform (OCAP) applications.[35] We request information on the advanced service offerings of small and mid-sized cable systems as well as for the largest MSOs.

34. We seek information on cable operators that currently provide or plan to provide video-on-demand. VOD allows subscribers to order video programming from a central server at any time of day, and to fast-forward, rewind, and pause the programming. What types of services are cable operators offering in this manner and how are they marketed? What percentage of subscribers access VOD content? What types of VOD programming are available? Do the offerings constitute "reruns" of generally available programming? Are there types of programming produced especially for VOD and what percentage of VOD content do these programs represent? What percentage of VOD content is complimentary versus subject to an additional subscription or one-time fee? What percentage of VOD content is exclusive to any one video distributor? One cable MSO is reported to be offering some of its

[32] Last year, we reported that the largest cluster size category (over 500,000 subscribers) had remained constant at 29 between 2002 and 2003. *2004 Report*, 20 FCC Rcd at 2830 ¶ 142.

[33] *See* U.S. General Accountability Office, *Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, GAO-04-8 (Oct. 2003) (*2003 GAO Report*); U.S. General Accountability Office, *Subscriber Rates and Competition in the Cable Television Industry*, GAO-04-262T (Mar. 2004); *2004 Program Packaging Report.*

[34] David Ewalt, *The TV Tussle*, FORBES, Jan. 5, 2005. *See also* National Cable and Telecommunications Association, *2004 Year-End Industry Overview*, Dec. 2004.

[35] *SCTE Standard on CableLabs OCAP Specification Achieves ANSI Approval,* at http://www.scte.org/news/detail.cfm?ID=288. OCAP is intended to enable the developers of interactive television services and applications to design such products so that they will run successfully on any cable television system in North America, independent of set-top or television receiver hardware or operating system software choices. *See* CableLabs, at http://www.opencable.com/ocap.html.

original VOD programming to other cable operators.[36] Are other MSOs also sharing their original VOD programming? In markets where cable operators offer VOD and compete against a wireline or wireless provider, is the cable operator providing exclusive VOD content to its subscribers? Have competitors to cable been foreclosed from obtaining VOD programming due to exclusive distribution contracts for that programming? Typically, how much of the cable system capacity and bandwidth is dedicated to delivering VOD services?

35. We seek information on cable operators that currently provide or plan to provide DVR service. What percentage of cable subscribers has access to cable-supplied DVRs and what percentage of those subscribers opt for the service? How many cable systems offer single tuner service, and how many offer dual tuner service? What options for storage capacity are being offered? Is the service offered in conjunction with digital service or is there a fee in addition to digital service? What percentage of the DVR set-top boxes are leased as opposed to purchased by the subscriber? Are the boxes branded by the cable system or by a third party developer? It has been announced that one cable MSO has entered into a strategic partnership with a leading developer of digital video recorders.[37] We seek information on any other similar arrangements. How do strategic and co-marketing relationships between cable MSOs and DVR manufacturers affect competition in the video programming market? Also, to what extent will consumer uptake of DVRs affect consumer demand for VOD?

36. High-speed Internet access or "cable modem" service constitutes an increasing percentage of total cable industry revenue.[38] What percentage of video subscribers also subscribe to cable modem service? What percentage of cable modem service subscribers are not video subscribers? How is the service priced? Are there different prices for different speeds? Do subscribers receive pricing discounts if they subscribe to both video services and cable modem service? Are cable operators who offer cable modem service giving subscribers a choice of Internet service providers? Has any cable operator blocked access to certain kinds of Internet content or applications and, if so, what kind? We also seek information on whether cable operators are beginning to test or deploy Internet Protocol version 6 (IPv6).[39]

37. Many cable operators appear to be adopting voice over Internet Protocol (VoIP) as the platform for their telephony offerings. What is the status of the development and deployment of VoIP? To what extent do cable operators continue to offer traditional circuit-switched telephone service? To what extent do cable operators offer telephony service for low-income households, similar to basic dialtone service or so-called Plain Old Telephone Service (POTS), which may include E-911 service and battery back-up systems? How is VoIP service being marketed to subscribers? Is this service offered in conjunction with other cable operator services such as cable service, VOD, and cable modem service? Is VoIP offered separately from cable modem service or cable service? Are cable services being discounted

[36] Shirley Brady, *Minding the Store: Comcast Shopping VOD Content to MSOs*, CableFAX Daily, Mar. 21, 2005.

[37] Nick Wingfield and Peter Grant, *Comcast Users to Get TiVo Options That Go Beyond Generic DVRs*, WALL STREET JOURNAL, Mar. 16, 2005. *See also* Comcast Corporation, *Comcast and TiVo Announce Strategic Partnership; Multi-Year Agreement to Make the TiVo Service Available to Comcast Customers* (press release), Mar. 15, 2005.

[38] As we reported last year, high-speed Internet access service generated approximately 15.4 percent of total cable industry revenue. *2004 Report*, 20 FCC Rcd at 2786 ¶ 45.

[39] IP Version 6 is a next generation IP protocol and replacement for the existing IP version 4. IPv6 is backward compatible with and is designed to fix the shortcomings of IPv4, such as data security and maximum number of user addresses. IPv6 increases the address space from 32 to 128 bits, providing for increased numbers of networks and systems, in addition to supporting quality of service (QOS) parameters for real-time audio and video.

for subscribers who subscribe to a package containing one or more advanced service? What percentage of video subscribers chooses VoIP or circuit-switched telephony?

38. The Open Cable Applications Platform (OCAP) standard was approved by the American National Standards Institute (ANSI) last year.[40] How has this helped push forward the development of OCAP applications?[41] How has it helped developments in OCAP compliant devices? Are set-top box and other manufacturers incorporating OCAP into their products?[42] Which products are currently OCAP compliant? How many OCAP compliant products have been deployed? How many are in use by subscribers today? When do MSOs plan to deploy OCAP compliant devices? How are solutions such as OnRamp helping the migration to OCAP applications?[43] Are cable operators currently using such solutions on legacy set-top boxes? Are there any planned deployments for this technology? What types of applications are there for OCAP? Do smaller cable systems have plans to deploy OCAP compliant devices and, if so, how will they do it?

39. *Navigation Devices*: With respect to the cable industry, we also seek updated information regarding the development of specifications for interoperable set-top boxes, *i.e.*, set-top boxes that can be moved from one cable franchise area to another and function with any given cable provider's local system, in CableLabs' OpenCable process.[44] How effective has the CableLabs process been? What percentage of existing equipment is compatible with the OpenCable standards? CableCARDs are removable security modules which, when inserted in an OpenCable certified set-top box, television, or other device, enables the delivery of digital video programming and other services. We seek information on the availability of CableCARDs and how cable operators make this option known to the public. We also solicit updated information on PacketCable, a CableLabs project intended to develop interoperable interface specifications for delivering advanced, real-time multimedia services over two-way cable plant.

40. In 2003, the Commission adopted technical, labeling and encoding rules to permit television sets to be built with "plug-and-play" functionality for one-way digital cable services.[45] We request information on how many products are currently available with plug-and-play functionality, or are soon to be available. We note that the cable and consumer electronics industries are in negotiations on specifications for bidirectional (*i.e.*, two-way) digital cable products, capable of supporting pay-per-view, VOD and interactive services. In a March 2005 Order, the Commission required those parties to file joint status reports with the Commission on the progress of negotiations and to hold joint status meetings with the

[40] *See* fn. 35 *supra.*

[41] For example, interactive television developer Iacta has used the OCAP standard to offer a "Games4TV Variety Pack" channel for video distributors, which allows subscribers to play video games over their televisions with a standard remote control. *See* Iacta LLC, at http://www.iacta.com/games4tv.

[42] For example, Samsung has deals with Time Warner and Charter to collaborate on products which support interactive applications and OCAP-compliant TVs. *See* Jeff Baumgartner, *Samsung, Time Warner, Charter Push OCAP-TV Needle*, CED Magazine, Jan. 7, 2005.

[43] OnRamp, developed by Liberate, provides a lightweight software engine that translates OCAP applications for older legacy boxes. It can be downloaded from the network into the set-top box's Flash memory or loaded onto the dynamic random access memory (DRAM). *See* Karen Brown, *Ramping Up Interactivity*, CED Magazine, July 4, 2004.

[44] The OpenCable standard is the result of an initiative being managed through Cable Television Laboratories, Inc. (CableLabs), a research and development consortium of cable operators. The standard is made up of technical specifications intended to facilitate interoperability among digital navigation devices manufactured by multiple vendors. *See Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775 (1998) (*Navigation Devices Order*).

[45] *2003 Navigation Devices Second Report and Order and FNPRM*, 18 FCC Rcd 20885 (2003).

Commission on or before August 1, 2005 and every 60 days thereafter on progress in bidirectional talks and a software-based conditional access agreement.[46] The Commission also extended the deadline for the phase-out of integrated set-top boxes until July 1, 2007, to allow the development of software based conditional access, and directed the six largest MSOs to submit a report by August 1, 2005 and every 90 days thereafter on CableCARD deployment and support.[47] On July 1, 2005, the Commission extended the date of the information collections until October 1, 2005.[48] We seek information on the efforts and progress of cable operators not subject to that Order.[49] How many CableCARDs do such operators have in service and are service calls required for installation? What is the monthly price, if any, for a CableCARD? What problems have been encountered with CableCARDs and how have they been resolved? We also seek comment on the availability of CableCARDs capable of processing multiple cable streams and the impact their availability has on the competetive marketplace for digital cable-ready receivers, including DVRs. How will the development and implementation of downloadable security impact these issues?

41. *Regulatory Issues*: Section 612(g) of the Communications Act provides that at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States and are subscribed to by 70 percent of those households, the Commission may promulgate any additional rules necessary to promote diversity of information sources.[50] We request comment and supporting data that would be useful for determining an accurate homes passed statistic, including the number of homes passed by systems with 36 or more activated channels. We further seek information regarding how many homes passed by systems with 36 or more channels actually subscribe to cable service. We ask that commenters providing estimates of these statistics based on sampling procedures explain their methodology in detail. In addition, we seek information regarding any developments in the last year that would suggest that the criteria specified under Section 612(g) have been met.[51] Further, if it is determined that the criteria have been met, we seek comment on what, if any, additional rules the Commission should promulgate to promote diversity of information sources.

42. Under Sections 614 and 615 of the Communications Act, cable operators must set aside up to one third of their channel capacity for the carriage of commercial television stations and additional channels for noncommercial stations depending on the system's channel capacity.[52] Commercial

[46] *Navigation Second Report and Order* at FCC Rcd 6812 ¶ 34. *See also Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Public Notice,* DA 05-1930 (rel. July 1, 2005) (extending the date of the information collections from August 1, 2005 to October 1, 2005).

[47] *Navigation Second Report and Order* at FCC Rcd 6814 ¶ 39. A CableCARD is a credit card sized security module that acts as an interface between a digital television set and a cable operator's network. CableCARDs can be used in lieu of a cable company's set-top box, allowing customers to purchase their own equipment. At present, CableCARDs only support one-way cable service and thus do not support services such as pay-per-view, VOD, interactive program guides, and interactive television services.

[48] *See Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Public Notice,* DA 05-1930 (rel. July 1, 2005) (extending the date of the information collections from August 1, 2005 to October 1, 2005).

[49] The Commission's *2005 Annual Cable Price Survey* seeks information on cable operators' deployment of CableCARDs, including the cost of installing, leasing and purchasing CableCARDs. *See 2005 Annual Cable Price Survey* at www.fcc.gov/mb/2005. For the 2005 Report, we plan to use information provided in response to the survey along with comments provided in response to this *Notice*.

[50] 47 U.S.C. § 532(g).

[51] *2004 Report*, 20 FCC Rcd at 2767 ¶ 20.

[52] 47 U.S.C. §§ 614(b), 615(b); 47 C.F.R. § 76.56.

broadcast television stations may elect carriage on cable systems pursuant to either must carry or retransmission consent.[53] If a television station elects must carry, the cable operator is required to carry the signal without compensation. Alternatively, when a station elects retransmission consent, the cable operator and broadcaster negotiate the terms of carriage. Broadcast television stations carried pursuant to retransmission consent, as well as stations carried under the must carry provisions, count towards the required set aside channels.[54] We seek information on the extent to which cable operators currently are using all their required set-aside channels for the carriage of local broadcast signals. We also request data on the percentage of broadcast stations carried on cable pursuant to retransmission consent agreements and the percentage that are carried pursuant to the must carry provisions. We further request comment on the "tier buy-through" option mandated by Section 623(b)(8) of the Communications Act.[55] This provision, which permits subscribers to purchase programming offered on a per-channel or per-program basis without first subscribing to tiers, other than the basic service tier, became fully effective on October 5, 2002, ten years after adoption of the "1992 Cable Act."[56] What portion of subscribers is taking advantage of this option? What, if any, problems does it create? How do cable operators make this option known to the public?

C. Direct-to-Home Satellite Services

43. As of the end of 2004, DTH (*i.e.*, DBS and C-Band) operators served approximately 25 million subscribers, led by DBS operators DIRECTV and EchoStar.[57] As discussed in our *2004 Report*, DBS operators are the most robust competitors to incumbent cable operators, though cable operators continue to serve more than 70 percent of all MVPD subscribers. We seek information and data that explain the factors contributing to DBS' growth in the video programming market and that can help us assess whether those characteristics will continue to position DBS as cable's principal competitor. To what extent are DBS subscribers new consumers of MVPD services as opposed to former cable subscribers?[58] GAO reports that the existence of a wire-based competitor has a measurable downward impact on the average monthly cable rate,[59] but is there evidence of meaningful price competition between DBS and cable? Do initial DBS equipment costs or other factors prevent cable subscribers from switching despite escalating monthly cable bills? Does the dynamic between the platforms change in markets where DBS offers local broadcast signals?

44. We seek information on the geographic characteristics of DTH subscribers.[60] Are they more likely to reside in urban areas than rural areas, or vice versa? To what extent do DBS subscribers

[53] 47 C.F.R. § 76.64(f).

[54] 47 C.F.R. § 76.56; *see also* 47 C.F.R. § 76.55(c) (definition of a qualified local commercial television stations).

[55] 47 U.S.C. § 543(b)(8). *See also* 47 C.F.R. § 76.921.

[56] Pub. L. No. 102-385, 106 Stat. 1460 (1992).

[57] DTH services use satellites to deliver video programming directly to subscribers. HSD users employ relatively large dishes (4-8 feet in diameter) to receive programming. DBS uses relatively small receiving dishes (18-24 inches in diameter). *See, e.g., 1995 Report*, 11 FCC Rcd at 2080-85 ¶¶ 49-53; *1998 Report*, 13 FCC Rcd at 24323 ¶ 61.

[58] *See DBS Gains Not Necessarily Cable's Losses*, SkyREPORT, June 13, 2005 (citing a report from Strategy Analytics, which found that, while DBS added 3.2 million new customers in 2004, the 10 largest cable operators together lost fewer than 500,000 basic subscribers).

[59] *See e.g., 2003 GAO Report and 2004 GAO Report.*

[60] A recent GAO report finds that DBS penetration rates have been and remain highest in rural areas, but since 2001, DBS penetration has grown most rapidly in urban and suburban areas, where the penetration rates were originally low. *See* GAO, *Telecommunications: Direct Broadcast Satellite Subscribership Has Grown Rapidly, But Varies Across Different Types of Markets*, Apr. 2005.

reside in areas not passed by cable systems? Although DBS is a national service, we continue to monitor technical limitations, such as line of sight, which impede the availability of DBS. How many or what percentage of households cannot receive DBS service because they are not within the line of sight of the satellite signal? We request any consumer surveys identifying differences between consumers who choose to subscribe to DBS or C-Band, rather than choose cable or another video programming distributor. What percentage of new DBS subscribers are former cable subscribers? What percentage are former C-Band households? What factors influence cable subscribers' decisions to switch to DBS and visa versa?

45. We request information regarding the investments that DBS operators have made or plan to make to augment their satellite fleets and equipment to increase channel capacity or offer advanced services. We request information on current channel capacity and the deployment of various technical methods to increase capacity. To what extent have advanced codecs such as MPEG-4 and VC-1 been deployed and how will the migration to these new systems impact channel capacity and competition with terrestrial services?[61]

46. *Local-into-Local:* Last year we reported that DBS operators provided local-into-local service in 155 of 210 television markets, which cover 95 percent of all U.S. television households. We request updated information on the number of markets where local-into-local television service is offered, or will be offered in the near future, pursuant to the Satellite Home Viewer Improvement Act of 1999 (SHVIA), including the number and affiliation of the stations carried.[62] What percentage of DBS subscribers are opting for local programming packages where available? What is the cost to consumers of local-into-local broadcast channels? What percentage of DBS subscribers subscribe to cable in order to receive local broadcast signals? We further request information regarding the digital transition. In what markets has retransmission consent been negotiated with regard to digital signals? How many markets receive local high definition programming? How many subscribers have the equipment necessary to receive high definition local broadcasts?

47. On December 8, 2004, the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) was enacted.[63] SHVERA extended certain provisions of the SHVIA, primarily pertaining to the distant signal copyright license and retransmission consent negotiations for five years. It also added some new provisions to the Communications and Copyright Acts pertaining to the retransmission by DBS of distant broadcast signals, including the option to carry broadcast stations deemed "significantly viewed" by the Commission. The Commission is currently undertaking a number of rulemaking proceedings to implement SHVERA.[64] We request comment on the potential impact of SHVERA on DBS' ability to compete in markets where it carries distant networks.

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[61] Codec is short for "Compression/Decompression." Compression refers to the process by which redundant information is removed from a digital stream to reduce the bandwidth required to transmit it. Decompression is the reverse process of recovering the removed information to restore the original digital stream. Advanced video codecs are capable of removing more redundant information as compared to legacy codecs, with little impact on the video quality.

[62] SHVIA was enacted as Title I of the "Intellectual Property and Communications Omnibus Reform Act of 1999" (IPACORA) (relating to copyright licensing and carriage of broadcast signals by satellite carriers, codified in scattered Sections of 17 and 47 U.S.C.), Pub. L. No. 106-113, 113 Stat. 1501, Appendix I (1999). *See also 2000 Report*, 16 FCC Rcd at 6039-40 ¶¶ 68-71.

[63] Pub. L. No. 108-447, 118 Stat 2809 (2004) (codified in scattered sections of 17 and 47 U.S.C.). SHVERA was enacted as Title IX of the Consolidated Appropriations Act, 2005.

[64] *See Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act*, 20 FCC Rcd 2983 (2005) (proposing rules for the carriage of significantly

(continued....)

48. *Prices, Equipment and Programming:* We request data on prices for DBS programming packages and equipment. What is the typical cost of DBS equipment and installation? Do more customers lease equipment or buy it? Do DBS operators offer service contracts that provide discounted prices for programming and equipment? We request information regarding DBS operator equipment leasing program options, including the monthly rates charged for leasing equipment. How do DBS leasing prices for equipment compare to those for cable equipment? To what extent, and through what specific market mechanisms, do satellite operators discount or "subsidize" equipment costs in order to attract subscribers? We also ask commenters to provide information on the number of channels and the monthly prices of various DBS programming packages. Are DBS operators able to access cable-operator-affiliated regional programming? With respect to foreign language or foreign originated programming, how many subscribers choose foreign programming alone and how many purchase additional programming? Are these subscribers required to pay for equipment in advance? What additional charges, if any, are required to obtain foreign programming?

49. With respect to large home satellite dish or C-Band service providers, our *2004 Report* found a continued decline in subscriber activations, caused principally by C-Band subscribers switching to DBS because of the smaller, less expensive, and easier to use equipment.[65] We also reported on the purchase by EchoStar of Superstar/Netlink Group, LLC, one of the largest distributors of large home satellite dish service and equipment. We seek information about programming and program packages that remain available for C-Band subscribers. How many program packagers offer programming to C-Band households? How are programming services packaged and what are the prices of the services offered? How much free and unscrambled programming remains for C-Band users to access? How much C-Band programming is purchased on an a la carte basis?

50. *Advanced Services:* We seek information on the status of current and future plans regarding both satellite-delivered high-speed Internet access with a telephone return path as well as two-way satellite delivered high-speed Internet access services offered by the satellite industry, including fixed satellite systems (FSS), DTH and DBS providers. How many consumers subscribe to each type of service and how much do they cost? We seek comment on the extent to which DBS providers are offering packages in conjunction with other companies, such as co-marketing arrangements with LECs. We request information on the sale of set-top boxes with DVR capabilities, including number of subscribers purchasing or leasing this equipment. To what extent are DVRs available from third parties? Are equipment subsidies or discounts also applied to advanced technology, such as DVRs, and to what extent are customers taking advantage of third party equipment versus operator distributed or leased equipment? We also seek information on the rollout of HD programming to DBS subscribers. To what extent are DBS operators offering broadcast and non-broadcast programming in HDTV format? With

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viewed signals); *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Procedural Rules*, 20 FCC Rcd 7780 (2005) (amending rules as specified in SHVERA); *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act*, 20 FCC Rcd 9319 (2005) (seeking comment on the requirement that satellite carriers carry both the analog and digital signals of television stations in local markets in noncontiguous states); *Technical Standards for Determining Eligibility for Satellite-Delivered Network Signals Pursuant to the Satellite Home Viewer Extension and Reauthorization Act*, ET Docket No. 05-182, FCC 05-94 (rel. May 3, 2005) (initiating inquiry into the adequacy of the digital signal strength standard and testing procedures used to determine whether households are eligible to receive distant broadcast digital television network signals from satellite communications providers); *Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Reciprocal Bargaining Obligation*, MB Docket No. 05-89, FCC 05-119 (rel. June 7, 2005) (extending reciprocal good faith bargaining obligations for retransmission to cable and satellite providers).

[65] *2004 Report*, 20 FCC Rcd at 2798 ¶ 64.

respect to the deployment of next generation set-top equipment,[66] are DBS providers adopting common application platforms similar to OCAP? We seek comment on the nature of advanced services, including the use of DVRs to implement Video-on-Demand functionality for satellite. We seek comment on the development of applications for interactive television and the extent to which these services are deployed. What is the time frame within which deployment is expected?

51. *Marketing of DBS Services*: We seek comment and information on DBS distribution arrangements, such as direct sales or leases to subscribers; sales through consumer retail outlets; sales through antenna installers; and any other form of marketing, distribution, installation, or service. To what extent is equipment, such as receiving antennas and receivers and recording devices, sold or leased separately from monthly or yearly service packages and to what extent are they only made available as a package sale or lease? We also seek information on the co-marketing and sales agreements between DBS operators and LECs, which are selling DBS service in conjunction with DSL and voice service. To what extent are PCOs marketing DBS service to their customers in MDUs? How many customers have been signed up for DBS service through these relationships?

52. *MVDDS*: In 2002, the Commission established the Multichannel Video Distribution and Data Service (MVDDS) in the 12.2-12.7 GHz band (12 GHz band), which is allocated to DBS on a primary basis.[67] MVDDS consists of 500 MHz of contiguous spectrum that is licensed across 214 service areas. MVDDS spectrum may be used to facilitate the delivery of new video and broadband communications services, such as local television programming and high-speed Internet access.[68] The technical rules reflect a balance in which the Commission affords protection to the DBS service and the non-geostationary satellite orbit (NGSO) fixed-satellite service (FSS) while allowing the entrance of MVDDS.[69] MVDDS licenses were first awarded in 2004 and we understand that equipment is still under development.[70] We invite comment on the status of MVDDS equipment and deployment.

D. Wireline Services

1. Local Exchange Carriers

53. We have previously reported that incumbent LEC entry into the MVPD industry remains limited, but that recent developments indicated renewed incumbent LEC interest in providing video programming services.[71] Specifically, we noted that several major incumbent LECs – BellSouth, Qwest, SBC and Verizon – had launched joint service with DBS service providers, and that several had reported

[66] With respect to next generation receive equipment, we refer to equipment capable of decoding advanced codecs, such as MPEG-4 or H.264; equipment capable of interfacing with home networks; or equipment containing new functions or services not currently deployed widely, such as larger or revised DVRs, HD capability, multiple tuners, or other new or advanced technologies.

[67] *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range*, 17 FCC Rcd 9614, 9680 (2002) (*MVDDS Second R&O*).

[68] MVDDS licensees may use the 12.2–12.7 GHz band for any digital fixed nonbroadcast service (broadcast services are intended for reception of the general public and not on a subscribership basis) including one-way direct-to-home/office wireless service. *See* 47 C.F.R. § 101.1407 (permissible operations for MVDDS).

[69] *See generally* 47 C.F.R. Part 101, Subpart P.

[70] *Assessment and Collection of Regulatory Fees for Fiscal Year 2005*, MD Docket No. 05-59, FCC 05-137 (rel. July 7, 2005) (declining to establish an MVDDS regulatory fee category). *See also 2004 Report*, 20 FCC Rcd at 2996-97 ¶¶ 59-61.

[71] *Id.* at 2823 ¶ 125.

plans to provide video via asymmetric digital subscriber line (ADSL), very high-speed digital subscriber line (VDSL), or fiber-to-the-premises (FTTP). Some LECs are deploying full fiber to the premises. Others are deploying fiber-to-the-node (FTTN), which provides fiber facilities to the neighborhood node, and coaxial cable or DSL connections from the neighborhood node to the residence.[72] What is the current extent of deployment of these broadband networks? What are LECs' future deployment plans?

54. We seek information generally regarding incumbent LECs that provide video programming services. Are there any regulatory or statutory impediments to LEC entry in the video service market? To what extent are LECs operating cable systems? To what extent are LECs overbuilding incumbent cable systems' service areas? Do LECs that operate cable systems face special hurdles to providing video service? We note that most incumbent LECs have marketing agreements with DBS providers wherein they sell the DBS operator's video services along with their telephony and DSL-based high speed Internet access service in a single package.[73] What effect have these agreements had on LEC entry into the video industry, specifically on LECs' ability to compete with incumbent cable operators? How many homes do incumbent LEC fiber and hybrid fiber networks pass and what are incumbent LECs' expansion plans for the near future? Are there specific residential areas that incumbent LEC overbuilds target? Do these deployments match the clustering of cable operators' systems or do they conform to some other operational or market-based considerations? Are the services offered by FTTP and FTTN comparable to those available via cable or satellite? To what extent will they increase bandwidth capacity over other MVPD architectures? Will such increased capacity permit greater provision of HDTV and advanced interactive services? Is there a pricing differential? Have LECs been impeded in their efforts to provide consumers with video choices by incumbent MVPDs? Has there been any notable churn from cable or DBS to FTTP and FTTN in the markets where it is available? Is there evidence of price competition between FTTP and FTTN and cable?

55. In addition, we previously reported that several of the largest incumbent LECs had announced plans to deliver video and other services to small businesses and residential customers using the Internet Protocol. SBC's planned IP service offering, called "Project Lightspeed," features video and would use SBC's DSL network; Verizon is in the process of building an all fiber IP network, offering a variety of IP-enabled services; and BellSouth has also built a fiber network with the hopes of offering video services in some of its service areas.[74] All three companies have announced plans to use Microsoft TV software, which supports IP-based transmission, to provide IP television (IPTV) services, and that initial deployments will support HDTV, PVR, VOD and an EPG. It is anticipated that the software will eventually support various forms of advanced, IP-based interactive television services.[75] We request comment on the status of these planned incumbent LEC IP video and IPTV deployments, including business models and actual and projected penetration rates. How do the proposed offerings of the various incumbent LECs differ from one another and how does each compare to services provided or planned by incumbent cable operators and other MVPDs?

[72] *Id.*

[73] *Id.* at 2825 ¶ 130.

[74] *Id.* at 2824 ¶ 128.

[75] Ken Belson and Matt Richtel, *SBC in Deal With Microsoft to Provide TV on High-Speed Lines*, NEW YORK TIMES, Nov. 16, 2004; Interactive TV Today, Feb. 18, 2005, Issue 5.87 Part 2. *See also* Vince Vittore, *Verizon Clicks on Microsoft TV*, TELEPHONY, Jan. 28. 2005.

56. Verizon and SBC are reported to be taking somewhat differing approaches to network architecture and service provisioning.[76] In addition, the carriers reportedly are taking somewhat different positions on the need to obtain local cable franchises for their IP video services. Verizon is reported to have sought and obtained a number of local cable franchises, while simultaneously seeking both state and federal legislative relief from local cable franchising obligations.[77] In contrast, SBC has maintained that "IP-based networks are not subject to traditional franchising" and that "IP is supposed to be tax free" and thus presumably exempt from cable franchise fees.[78] In addition, some have argued that imposing cable franchise requirements on incumbent LECs would be both burdensome and redundant, because negotiations would delay entry and impose unnecessary costs and such carriers already have rights-of-way access agreements with localities that adequately protect the localities' interests in managing the carriers' use of the rights-of-way in the provision of their services.[79] Franchising representatives, in contrast, maintain that negotiating franchises with local officials is no more onerous than developing a business plan.[80] Do any architectural or service differences in the incumbent LECs' planned services justify differing regulatory outcomes? Are existing incumbent LEC rights-of-way authorizations sufficient? Is local cable franchising a barrier to entry for the incumbent LEC IP video providers? Are there other significant barriers to entry facing these providers?[81]

57. Many of the smaller incumbent LECs are also reportedly constructing their own all-fiber or mostly-fiber networks to deliver new services to their existing voice and data customers. Some

[76] *See e.g.*, Ed Gubbins, *SBC Clarifies FTTN, FTTP Plans*, TELEPHONY, Nov. 12, 2004; Alan Breznick, *Big U.S. Phone Companies Tune into Video Again*, Cable Digital News, Vol. 9, No. 11, Dec. 31, 2004; Carol Wilson, *FTTP: Bell Companies*, TELEPHONY, Feb. 28, 2005.

[77] *See, e.g., Verizon Seeks Regulatory Relief for Video Service*, Broadband Daily, Feb. 8, 2005; *Va. Senate Tables Verizon Cable Franchise Bill*, Comm. Daily, Feb. 9, 2005; Linda Haugstead, *Telecom Fires Blaze in States*, Multichannel News, Mar. 28, 2005.

[78] Linda Haugstead, *Regulatory Machinations*, Multichannel News, Feb. 21, 2005, quoting SBC spokesman Kevin Belgrade; Paul Kapustka, *FCC, SBC on Different IPTV Channels*, Advanced IP Pipeline Newsletter, Jan. 10, 2005, quoting SBC Chairman and CEO, Edward Whitacre.

[79] *Cable Franchise Obligations for Telco's Video Services Debated*, Telecommunications Report Daily, Apr. 15, 2005, citing remarks by William R. Richardson, Jr., Wilmer Cutler Pickering Hale and Dorr LLP, "who has represented Bell companies in a variety of proceedings," indicating that cable TV franchise requirements on the fiber-based IP offerings contemplated by SBC and Verizon would be redundant.

[80] *Id.*, citing remarks by Libby Beatty, executive director of the National Association of Telecommunications Officers and Advisors.

[81] We note that SBC, Verizon, and BellSouth have filed various petitions with the Commission concerning the appropriate regulatory treatment for IP services provided via their upgraded and new fiber networks, and seek, where appropriate, forbearance from the application of Title II requirements to their IP platforms and services. In addition, SBC has filed a petition seeking a declaration that "IP platform" services, including IP video, are exempt from all legacy regulatory requirements under the Act, including Title VI franchising obligations. *See* Petition of SBC Communications, Inc. For Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services, WC Docket No. 04-29 (filed Feb. 5, 2004). *See also* Petition of the Verizon Telephone Companies for Declaratory Ruling, or Alternatively, for Interim Waiver with regard to Broadband Services Provided via Fiber to the Premises (filed June 28, 2004); Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises (filed June 28, 2004); Petition of BellSouth for Forbearance from Title II Common Carriage Requirements That Apply to Incumbent LEC Broadband Transmission (filed Oct. 27, 2004). The Commission is currently assessing the appropriate legal and regulatory framework for all "IP-enabled" services through its rulemaking process, and has incorporated SBC's request for declaratory relief for IP Platform services into this docket. *See IP-Enabled Services*, 19 FCC Rcd 4863 (2004); *Wireline Competition Bureau Extends Reply Comment Deadlines for IP-Enabled Services Rulemaking and SBC's "IP Platform Services" Forbearance Petition*, 19 FCC Rcd 10474 (2004).

estimate that these fiber-rich networks already pass as many as 1.5 million homes, and that the carriers are increasingly offering digital video services to subscribers or are gearing up to launch IP video services in small and rural markets.[82] We seek comment on these deployments, including penetration rates, and business models. Do technological, economic or market entry issues facing smaller and rural incumbent LECs differ from those facing the larger carriers? Are there any unique barriers to entry into smaller and rural video markets?

58. Both Title VI of the Communications Act and the Commission's rules impose certain record keeping and administrative requirements on cable operators, including public inspection, customer privacy, and Equal Employment Opportunity (EEO) requirements. Are there instances in which these obligations are redundant of, or inconsistent with, requirements imposed on LECs under Title II of the Act and corresponding Commission rules? To what extent, if any, may such additional administrative requirements impede LECs' provision of video service?

2. Broadband Service Providers and Open Video System Operators

59. In our *2001 Report*, we addressed a new class of providers called broadband service providers (BSPs),[83] and in our *2003 Report*, included overbuilders (municipal, independent, competitive LECs (CLECs)) as BSPs, because most, if not all, operate state of the art networks capable of providing bundles of services (*i.e.*, voice, advanced video and data services).[84] We request information regarding the provision of video, voice, and data services by BSPs, including municipal, independent and CLEC overbuilders, and open video system (OVS) operators. Are video programming services offered in combination with telephone and high-speed Internet access services and, if so, how are rates affected by the packaging of multiple services? How many, or what percentage of, BSP and OVS subscribers purchase video service alone, video and telephony, video and high-speed Internet access services, or all three services? We further seek comment on the current and potential effect of BSPs and OVS providers on the status of video competition. As we noted in the *2004 Report*, BSPs and OVS providers serve less than two percent of MVPD subscribers nationwide, though they serve larger portions of specific local franchise areas.[85] We request comment on the reasons why this percentage is so low. We seek comment on the characteristics that facilitate BSP competitiveness (*e.g.*, number of subscribers, homes passed, geographical reach, demographics, and business models). Have BSPs become more competitive in recent years? Are there still significant barriers to entry? What are the technical and economic factors that determine whether overbuild systems are successful? To what extent are overbuilders operating under the open video system classification?

3. Electric and Gas Utilities

60. As previously reported, electric and gas utilities provide voice, video and data services by overbuilding incumbent cable systems with fiber optic networks, often in joint ventures with other

[82] Alan Breznick, *Smaller Phone Companies Scratch the Video Itch*, Cable Digital News, Feb. 2005.

[83] *2001 Report*, 17 FCC Rcd at 1296-97 ¶ 3. We defined broadband service providers in the *2004 Report*, 20 FCC Rcd at 2801 ¶ 70 n.362, as "newer firms that are building state-of-the-art facilities-based networks to provide video, voice and data services over a single network," and noted that, usually, the services of a BSP can be purchased separately as well as in a bundle. In this regard, use of the term "BSP" is not intended to imply anything with respect to Commission policy or proceedings that might involve broadband services. *2001 Report*, 17 FCC Rcd at 1296-97 ¶ 3; *2002 Report*, 17 FCC Rcd at 26948-52 ¶¶ 102-11.

[84] *2003 Report*, 19 FCC Rcd at 1658-59 ¶ 78. *See also 2004 Report*, 20 FCC Rcd at 2801 ¶ 70.

[85] *2004 Report*, 20 FCC Rcd at 2869 Appendix B, Table B-1.

companies.[86] We seek information regarding utility companies that provide video services. To what extent are video programming services being bundled with telephone, high-speed Internet access, or other utility services? How does the ability to offer bundled services affect the relative competitive position of these utilities? Are the prices charged by utilities similar to cable's pricing of such services? If not, how do they differ? In addition, several utility companies have been experimenting with "broadband-over-powerline" (BPL) technology, which uses power lines to carry high-speed data signals the "last mile" to the home.[87] We seek comment on the extent to which BPL technology can or is being used to provide video programming services, either separately or together with voice and data services.

E. Internet Video

61. *Streaming and Downloadable Video.* In our *2004 Report,* we noted that video provided over the Internet has grown and promises to become an increasingly strong participant in the market for the delivery of video programming.[88] We further noted that most instances of video streamed over the Internet (sent from the content provider to the subscriber in real time) are not yet broadcast quality; high-quality streaming applications require very high speeds of transfer; and these applications have generally been used to augment or time-shift video provided originally via other distribution technologies. We also noted that most near term use of the Internet to provide video will be for downloadable video. Are these conclusions still valid?

62. We seek updated information as to the quality of readily available streaming and downloadable video. We are particularly interested in what criteria should be used to compare picture quality of Internet-based video to video programming distributed by traditional broadcasters and MVPDs. Should the Commission consider the resolution and frame rate of the picture only? Should we also consider the image quality, the frequency with which it can be accessed, or other factors that would make it comparable to broadcast or MVPD-provided video? We note that real-time streaming of video over the public Internet often depends on a myriad of factors, including the choice of video codecs, web server designs, Internet traffic conditions, and the Internet provider's network infrastructures. Therefore, when assessing the quality of Internet-based video, should the Commission also specifically assess the rate of video packet delivery, jitters, delays, or other factors that could impair video quality? We continue to seek information on the types of video services currently being offered over the Internet both in real-time and downloadable format. We also seek projections of whether and, if so, when Internet video will become a viable competitor in the market for the delivery of video programming. What are the implications of using the Internet to pass through video signals?

63. *Internet Protocol Television.* In addition to streaming and downloadable video provided over the Internet, Internet Protocol television (IPTV) is also becoming available for download through a broadband Internet connection directly to a set-top box to be viewed on the television, similar to MVPD

[86] *Id.* at 2826 ¶ 132; *2003 Report*, 19 FCC Rcd at 1606 ¶ 119.

[87] *2004 Report*, 20 FCC Rcd at 2827 ¶ 133.

[88] *Id.* at 2817-18 ¶ 114. For certain definitional purposes, "video programming" means "programming provided by, or generally considered comparable to programming provided by, a television broadcast station." 47 U.S.C. § 522(20).

video-on-demand services.[89] As previously noted, some industry analysts call this technology "Internet Bypass" or "client-based server players."[90] IPTV differs from Internet-based video in that IPTV signifies an operator-led approach to offer traditional aggregated, retail video using IP as the transport platform. IPTV providers usually are responsible for end-to-end service quality control, including network traffic, jitters, delays, packet prioritizations, and networking equipment implementations. In addition, providers can offer far more sophisticated programming packages to target specific channels at specific areas or groups of users. IPTV can be provided over different kinds of broadband Internet connections, including FTTP/FTTN, hybrid fiber-xDSL, xDSL, and cable modem. When used for video programming delivery by cable and other MVPDs, should IPTV be considered a separate service, or simply a different means of video programming transmission? We invite comment on whether and to what extent MVPDs are delivering IPTV over their broadband Internet connections, and information on the types of IPTV services that are planned or being deployed. We seek projections of whether and when IPTV will have a competitive impact on the market for the delivery of video programming. We also seek comment on what Digital Rights Management (DRM) and other security technologies IPTV providers use, and the effect of the choice of DRM on competition. We also request comment on any other competitive or regulatory issues raised by the provision of IPTV over broadband Internet connections.

F. Broadcast Television Service

64. Broadcast television is a competitor in the video marketplace for programming content, audiences and advertising revenues as well as a supplier of programming content to MVPDs. We seek data and comment on the role of broadcast television in the market for the delivery of video programming. Broadcast television's ability to compete with MVPDs is heavily reliant on their ability to attract audience and advertising dollars to their programming. As we have noted in previous reports, cable programming has been gaining in audience share against broadcast programming. We seek data on broadcast network and station audience shares, especially relative to those of non-broadcast programming services. We also request data on broadcast advertising revenue. To what extent has cable gained local, regional, or national advertising market share from broadcast television? To what extent are cable television and DBS retransmission consent negotiations providing broadcasters with an additional revenue source, either through direct compensation or through indirect benefits such as, for example, contracts for the carriage of affiliated programming? If the compensation is not direct, how is it accounted for? What forms of compensation are broadcasters receiving for retransmission consent?

65. *Digital Television Broadcasting:* In previous *Reports*, we have addressed DTV, and more specifically high definition television (HDTV), as part of our overview of each video delivery technology. Last year, we focused on the transition from analog to digital television service. Specifically, we inquired about the data sources and techniques used for monitoring the transition. We invite comment and seek data on a broad range of issues relating to the DTV transition. We are most

[89] With IPTV, a digitized signal is sent through a switched telephone or cable network via a broadband connection to a set-top box programmed with software that can handle viewer requests to access media sources. A television is connected to the set-top box that decodes the IP video and converts it into standard television signals. The Switched Video Service (SVS) system allows viewers to access broadcast network channels, subscription services, and movies on demand. *See* http://www.webopedia.com/TERM/I/ Internet_protocol_television.html. *See also 2004 Report*, 20 FCC Rcd at 2820 ¶ 119.

[90] *2004 Report*, 20 FCC Rcd at 2820 ¶ 119 n. 544. A client-server player is a system for the streaming, downloading, recording and playback of content which may be stored locally on the devices but allows some central control by the provider, such as content updates or software updates. Video content can be downloaded or streamed to the subscriber through high-speed connection to the Internet. *Id. See also* Tom Wolzein, Mark Mackenzie, *Pipe Dreams: Media's Exploding Capacity*, Bernstein Research, May 2004.

interested in the ways in which broadcast television stations' deployment of digital television service, and the DTV programming provided by MVPDs, impact competition in the video programming distribution market. Is the growth of DTV broadcasting making broadcast television a substitute for, or competitor of, MVPDs? We invite comment on current and projected levels of consumer access to and use of DTV, including over-the-air availability of DTV service and carriage of DTV programming by MVPDs, including satellite systems as well as cable systems. We also invite comment on programming content that is available in DTV formats, equipment that is used to receive DTV programming, and consumer education efforts.

66. *Consumer Access to Broadcast Television Service:* We request information on how consumers receive television programming, and how many of these households have the capability to receive DTV programming. Consumers who do not subscribe to an MVPD service rely on over-the-air transmission of broadcast television signals. Other households, which subscribe to an MVPD service, may receive broadcast television programming over the air on those television receivers that they have chosen not to connect to that service. As discussed in a Media Bureau staff report, estimates of the proportion of households relying solely on over-the-air broadcast television range from 13 percent to 19 percent of television households.[91] We request data on the number or percentage of households relying solely on over-the-air broadcast television for programming, as well as the number of MVPD households that rely on over-the-air reception for local broadcast service on one or more of their television sets not connected to an MVPD, by type of MVPD service. We also request information or estimates about the number of households that use cable, DBS, or other MVPD service without paying for it.[92] We ask commenters to provide demographic information that might assist us in classifying such households (*e.g.*, urban vs. rural, income, education levels, age).

67. We specifically request information on the number of households that are able to receive DTV/HDTV programming either over the air or from an MVPD. How many households that rely on over-the-air reception are also DTV households? How many MVPD subscribers choose to receive broadcast DTV signals over the air? We seek current data and projections for the number of households that rely on over-the-air reception of broadcast television that have DTV sets, including the number that have built-in or separate DTV tuner capability. How many MVPD systems are carrying all local broadcast stations that are offering DTV programming? How many MVPD subscribers are served by systems that carry DTV programming, and how many are subscribing to such services? How many subscribers are receiving new services, such as USDTV, which employ available DTV capacity from multiple broadcasters in a market?[93] We also seek comments on how these subscriber numbers are expected to grow over the next several years.

68. *Availability of DTV Programming Service:* We seek information on the availability of over-the-air DTV service to viewers. What portion of the population has access to over-the-air DTV service? What is the difference in terms of population coverage between the full authorized coverage area and the coverage area based on the actual facilities of DTV stations that are now operating? What reception difficulties, if any, do viewers that are within the service areas of DTV stations experience? What advances have been made in reception performance? Are there unique reception issues that differentiate DTV service from analog service in terms of either better or worse over-the-air reception?

[91] *Over-the-air Broadcast Television Viewers*, Media Bureau Staff Report, MB Docket No. 04-210, Feb. 28, 2005, at 3. *See also 2004 Report*, 20 FCC Rcd at 2806 ¶ 81.

[92] *See e.g.*, National Cable & Telecommunications Association, *2004 Survey of Cable Theft*, Mar. 2005 (reporting a decline in theft of service).

[93] *See 2004 Report*, 20 FCC Rcd at 2808 ¶ 85. *See also* US Digital Television, Inc., at http://www.usdtv.com.

69. We also request comment on carriage agreements between MVPDs and broadcasters. Currently, carriage of broadcast DTV signals by cable and satellite systems is voluntary.[94] How much broadcast DTV, either SDTV or HDTV formats, is being provided over cable and satellite systems? We ask specifically how many noncommercial educational broadcast stations are being carried, and under what terms. How many cable operators are carrying multicast DTV or would be willing to do so if and when broadcasters transmit multiple streams? Where cable operators are carrying multicast DTV, are they carrying all programming streams offered by the broadcaster? To what extent do they decline to carry multicast streams, such as those focusing on local news, that conflict with existing or planned cable programming offerings? To what extent do DBS and other MVPDs carry broadcast DTV programming? Do non-cable MVPDs carry multicast DTV or plan to carry multiple streams of broadcast DTV programming?

70. We request information regarding the carriage of DTV programming by MVPDs and plans to increase the amount of DTV programming carried. To the extent that broadcast HDTV is not being carried, why is it not being carried? How much non-broadcast HDTV programming is being carried by MVPDs? We also seek comment on the packaging and pricing of broadcast DTV offered by MVPDs. In addition, we seek information on how MVPDs package and price broadcast and non-broadcast DTV programming? Do MVPDs offer separate packages for broadcast and non-broadcast DTV programming? Do cable subscribers need to purchase the "digital tier"[95] of service in order to receive any DTV content? What impact will the digital transition have on competition if cable has the capacity to provide broadcast HD programming, but DBS operators do not?

71. *Digital Broadcast Programming*: We request information regarding the amount and type of DTV programming (*e.g.*, network, local, syndicated) currently offered by broadcasters. To what extent are broadcasters using their DTV spectrum for standard definition digital television (SDTV), high definition television (HDTV) and multicasting? How much programming is offered in each format, overall and in prime time? What has been the experience with broadcasting high definition and other programming at the same time? What data rate is used for HD programming in such circumstances? We seek this programming information for both broadcast networks and local stations (*i.e.*, network affiliated and independent stations). To what extent are stations locally producing DTV or HDTV programming? To what extent are stations offered network HDTV programming that they are either not equipped to pass through and broadcast, or for other reasons do not broadcast? How are noncommercial educational broadcasters, including PBS affiliates, using the DTV spectrum, and are there differences between commercial and noncommercial broadcasters' offerings? To what extent are broadcasters deploying advanced services such as ACAP?[96]

72. Last year, we reported on the efforts of several companies using broadcast spectrum for subscription video distribution via DTV streams.[97] We seek updated information on the status of these

[94] *See Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules*, 20 FCC Rcd 4516 (2005).

[95] Digital tier does not refer to content viewed in digital format; rather it refers to the tier of programming that is digitally compressed for transmission purposes only in order to offer cable subscribers additional content options. The digital compression process starts with video in analog format, compresses the signal using digital technology, and then the signal is converted back into analog format for viewing. Digitally compressed video is always viewed in its original analog format, regardless of what type of television set the viewer uses to view the video.

[96] ACAP, or Advanced Common Application Platform, is a standard that has been submitted to the Advanced Television Systems Committee (ATSC) and which specifies a method for supporting applications to over-the-air broadcasting and cable systems, and can be applied to satellite-based systems. It is distinguishable from the OCAP standard, which is specifically designed for cable systems.

[97] *2004 Report*, 20 FCC Rcd at 2808 ¶ 85.

efforts and other planned uses of DTV spectrum. To what extent are broadcasters using or planning to use DTV spectrum for other ancillary and supplementary services (*e.g.*, datacasting)? We seek information on any services providing interactive programming using DTV spectrum.

73. *DTV Equipment*: We seek information regarding the equipment needed to receive DTV programming either over the air or from an MVPD. To receive DTV/HDTV programming over the air, a consumer must have an antenna capable of picking up the broadcast signal and a digital television receiver that includes a DTV tuner, or a separate set-top box containing a DTV tuner. In addition, a consumer can also have an analog television set with a digital set-top box that converts digital broadcast signals to analog signal. The Commission has adopted rules to phase in DTV tuner requirements for new television sets that would make over-the-air reception of broadcasters' DTV signals possible without the use of a separate box.[98] We request information on the total number of digital television displays that have been shipped to retailers and how many have been sold to consumers. How many of these digital television sets, both shipped and sold, include over-the-air DTV tuners? How many separate set-top over-the-air DTV tuners have been shipped to retailers, and how many of these tuners have been sold to consumers? How many DBS receivers contain over-the-air DTV reception capabilities? Tuner cards meeting the Advanced Television System Committee (ATSC) DTV standards may be used in personal computers to view programming on a desktop computer monitor. How many of these cards have been sold?

74. MVPDs deliver DTV programming to their subscribers in much the same manner as they deliver analog signals; however, a set-top box with a digital tuner or a Digital Cable Ready receiver with a CableCARD is generally needed to display the programming on a digital television[99] In addition, broadcast or MVPD-provided digital programming can be converted into analog format either centrally by the service provider or at subscriber premises using a set-top box (digital to analog down converter) so that digital programming can be viewed on an analog television receiver. Where MVPDs are carrying broadcast digital programming, we seek information on the nature of the investment in additional equipment that is required by the subscribers to view this programming in its digital format and the number of subscribers that have acquired the necessary equipment. We also request information on MVPDs' investments in equipment used to convert digital signals to analog either at a central facility or at the subscribers' premises. How many subscribers have set-top boxes capable of converting standard definition DTV signals to analog? How many have set-top boxes capable of processing and passing through HDTV signals? We seek information as to the experience of all the parties involved in those situations where DTV signals have been down-converted to an analog format or a standard definition digital format at a cable system head-end prior to distribution.[100] We further seek information on the

[98] *See also Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, 17 FCC Rcd 15978, 15995-96 ¶¶ 39-40 (2002); *Requirements for Digital Television Receiving Capability*, ET Docket No. 05-24, FCC 05-121 (rel. June 9, 2005) (affirming or amending various phase in dates for DTV tuners in certain sized television sets and proposing that all TV receivers with screen size 13" or larger and other TV receiving devices must have DTV tuners no later than December 31, 2006). The phase-in plan initially requires 50 percent of all new television sets with screen sizes 36 inches and above to include DTV reception capability by July 1, 2005; and 50 percent of mid-sized sets (25"-36") must have DTV tuners by July 1, 2005 and all such mid-sized sets must have DTV tuners by March 1, 2006.

[99] In 2003, the Commission adopted standards to ensure the compatibility of cable television systems with DTV receivers and related consumer electronics equipment. *See 2003 Navigation Devices Second Report and Order and FNPRM*, 18 FCC Rcd 20885.

[100] Such down conversion is explicitly authorized under the cable television broadcast signal carriage rules with the consent of the station involved. *See Carriage of Digital Television Broadcast Signal*, 16 FCC Rcd 2598 (2001). At least in partial reliance on this decision, a number of television stations have obtained Commission authorization to cease operating their analog facilities and return those frequencies for alternative uses. *WWAC-TV, Atlantic City,*

(continued....)

availability of MVPD set-top boxes with over-the-air DTV tuners. We request information on the number of cable and DBS set-top boxes designed for the provision of DTV that have been shipped to cable or DBS providers and how many subscribers use such set-top boxes. We also seek data on the number of cable and DBS set-top boxes designed to provide HDTV that have been shipped to cable or DBS providers and how many subscribers use such set-top boxes.

75. Finally, we ask commenters to provide projections on the number of households that are planning to buy a digital television set with a built-in digital tuner within the next year, in the next two years, and in the next three years. How many of these television sets will have a screen size of 36 inches or larger; how many will have a screen size 25-35 inches; and how many will have smaller screens?

76. *Consumer DTV Education Efforts:* On October 4, 2004, the Commission announced a DTV consumer education initiative to increase public awareness of the transition to DTV.[101] In addition, the FCC launched a joint effort with the Consumer Electronics Association and the Consumer Electronics Retail Coalition to create and distribute a tip sheet that describes digital television equipment and provides a glossary of common DTV terms. We request information regarding this and other industry participants' efforts to educate consumers about the digital transition and to promote DTV. Have these programs resulted in higher consumer familiarity with DTV in general and HDTV specifically? We seek data regarding consumers' awareness of the DTV transition, including consumer survey results. Last year, we reported on retailers' efforts to institute point of sale educational programs.[102] Do consumers rely on information from the government, consumer electronics retailers, news programming, broadcasters, other video program distributors and producers, or others? What type of education effort is currently going on in retail stores? How successful have retailers' education efforts been? Do these efforts correlate to increased DTV equipment sales? How are broadcasters and MVPDs advertising or promoting DTV/HDTV beyond the text indicating that a program is being simulcast in HDTV? To what extent is broadcast advertising time being used to promote DTV/HDTV? How much advertising of DTV/HDTV is there on programming carried by cable operators or other MVPDs? Do newspaper or other television guide listings indicate when programming is available in HDTV format?

G. Wireless Cable Systems

77. As of April 2004, there were approximately 200,000 wireless cable subscribers, down from a peak of 1.2 million in 1996.[103] Thus, wireless cable operators offer limited competition to incumbent cable operators. Many licensees of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS)[104] used by wireless cable operators to provide video service have chosen to

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New Jersey, 17 FCC Rcd 19148 (2002); *WNVT-TV, Goldvein, Virginia*, 18 FCC Rcd 18517 (2003); *KVMD(TV), Twentynine Palms, California*, 18 FCC Rcd 9131 (2003); WRNN-TV, Kingston, New York, 19 FCC Rcd 12343 (2004). WHDT-TV-DT, Stuart, Florida, which operates as a digital facility but never had a paired analog station, also operates pursuant to the same cable television carriage rules. *Petition for Declaratory Ruling that Digital Broadcast Stations Have Mandatory Carriage Rights*, 16 FCC Rcd 2692 (2001).

[101] The effort included creation of a website – www.dtv.gov – to provide consumers with a one-stop source of information on the transition.

[102] *2004 Report*, 20 FCC Rcd at 2812-13 ¶¶ 99-102.

[103] *Id.* at 2814 ¶ 104.

[104] The BRS and EBS services include the former MMDS and ITFS services. Their designations and service rules were changed in 2004. *See Amendment of Parts 1, 21, 73, and 74 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, 19 FCC Rcd 14165 (2004).

focus on the delivery of non-video broadband services, such as high speed Internet service.[105] We seek information on the factors that have led wireless cable operators to move away from offering video services over their platforms, including any concerning access to programming, bandwidth considerations, local regulatory considerations, and bundled service offerings. Is this trend of wireless cable exiting video programming an indicator of the scale of the video platform that is necessary to compete in the marketplace?

H. Private Cable Operators

78. We request information on the types of services offered by private cable operators (PCOs), also known as satellite master antenna television (SMATV) operators. We seek information on the number of PCOs in the United States, the geographic areas they serve, and the identification and size of PCO companies. How do the programming packages offered and the prices of such packages compare to those of incumbent cable operators? In the *2004 Report,* we found that PCOs were partnering with DBS operators DIRECTV and EchoStar. How many of these alliances exist and have the number of these alliances increased or decreased over the past 12 months? Are there services that private cable operators provide their subscribers that cable, DBS, and other technologies do not? What factors affect the health and viability of the private cable industry?

79. The Commission made PCOs eligible for CARS licenses in 2002.[106] This action enhanced opportunities for PCOs to provide additional competition to incumbent cable operators. We further stated that all MVPDs would now "have the opportunity to provide video services in a balanced competitive environment . . . ."[107] We seek comments as to whether CARS licenses are being used by PCOs as envisioned and whether the anticipated benefits are being achieved.

I. Home Video Sales and Rentals

80. We have considered home video sales and rentals part of the video marketplace because they offer services similar to premium, pay-per-view and VOD programming services.[108] We seek information regarding the home video sales and rental market, including data on the number or percentage of households with videocassette recorders and DVD players. DVD sales have grown significantly since we began charting their usage and appear to have supplanted VHS as the preferred format for stored video media. We request information on the amount of programming available in DVD and VHS formats, for sale and rental, the cost of rentals, and how this compares with the cost of pay-per-view, video-on-demand, or near video-on-demand programming offered by MVPDs. We also seek information on Internet-based video sales and rental services and the effect, if any, they have on video distributors' service offerings, such as VOD and pay-per-view.

J. Home Networking

81. In the last *Report*, we discussed several new efforts by cable operators in home networking. Home networking allows connection of multiple devices in the consumer's home (*e.g.*, set-top boxes, television sets, personal computers) to a central processing device (*e.g.*, set-top box, cable modem). Cable operators sought to offer home networking services using a wireless system based on

[105] *2004 Report*, 20 FCC Rcd at 2814 ¶ 106.

[106] *Amendment of Eligibility Requirements in Part 78 Regarding 12 GHz Cable Television Relay Service*, 17 FCC Rcd 9930 (2002).

[107] *Id.*

[108] *See 2003 Report*, 19 FCC Rcd at 1675 ¶ 108.

CableLabs' CableHome specifications or alliances with wireless hotspot providers to offer their subscribers high-speed data access via Wi-Fi hotspots.[109] Other operators were conducting trials of the power industry's HomePlug technology using the household's electrical wiring for networking.[110] Cable operators can also deploy home networks over the internal coaxial wiring.[111] The most common application for home networking remains connecting multiple computers in the home to cable modem services, but we seek information on other emerging applications including updates on home networking in general, Wi-Fi, and Home Plug.

82. We also reported on increasing demand for home gateways that incorporated evolving Institute of Electrical and Electronics Engineers (IEEE) standards and CableLabs specifications. These new devices provide connectivity in the home powerful enough for VoIP and/or Wi-Fi hotspots. Many companies planned to deliver products based upon the newly revised IEEE 802.11n, CableHome 1.1, and PacketCable 1.1 standards. We seek information on the introduction of home gateways. How many systems have deployed home gateways, and how many customers have subscribed to home gateway services?

K. Advanced Compression Techniques

83. In the *2004 Report*, we noted that advanced video compression technologies (codecs) such as MPEG-4 H.264[112] and Microsoft's VC-1[113] were being evaluated as successors to the current MPEG-2 standard for video distribution. For example, the ATSC was considering the codec for inclusion in its E-VSB standard. We request updates on such evaluations and information on any launches or planned launches of services which utilize advanced codecs. Which codec has the most market share? How much hardware currently available at retail includes advanced codecs?

L. Commercial Mobile Radio Service Providers

84. In the *2004 Report*, we noted that some commercial mobile service providers had introduced video programming services on mobile telephones and other wireless devices, such as MobiTV.[114] This trend has continued as Verizon Wireless launched V-CAST in February 2005, which provides streaming video to mobile handsets via Verizon's CDMA EV-DO wireless network.[115] We request information on the availability and deployment of mobile television services such as V-CAST and MobiTV. How many mobile telephone users have access to and subscribe to such services? Are specialized telephones or other devices required to receive these services? How much do such services

[109] Wi-Fi is an interoperability certification for wireless local area network (LAN) products based on the IEEE 802.11 standard. A "hotspot" is a public or commercial space where members of the public can access Wi-Fi service, either for free or for a fee. *See, e.g.*, Wi-Fi Alliance, at http://www.wi-fi.com.

[110] HomePlug 1.0 is the specification for a technology that connects devices to each other through the power lines in a home, using Ethernet, USB and 802. *See* HomePlug Powerline Alliance, at http://www.homeplug.org.

[111] *See* Multimedia Over Coax Alliance, at http://www.mocalliance.org/en.

[112] MPEG-4 is an ISO/IEC standard developed by the Moving Pictures Experts Group (MPEG). H.264 is an annex to the MPEG-4 standard. *See* MPEG Industry Forum, at http://www.m4if.org/mpeg4.

[113] VC-1 is a standard developed by Microsoft, Inc., and is also known as Windows Media Video 9 (WMV 9). *See* Microsoft Windows Media, at http://www.microsoft.com/windows/windows media/default.aspx.

[114] *2004 Report*, 20 FCC Rcd at 2815 ¶ 107, citing Sprint PCS' launch of "MobiTV," which delivers prepackaged video clips and real-time programming from programming networks, such as MSNBC, ABC News, Fox Sports, CNN, and Comedy Central. Other companies such as Cingular and Midwest Wireless now offer MobiTV.

[115] *See e.g.*, Scott Moritz, *Verizon's Uphill Data Push*, TheStreet.com, Apr. 15, 2005.

cost? In which markets are these services available? Are any other providers planning to launch similar services and is additional network capacity required to provide them? To what extent should mobile telephone providers that offer video programming be considered MVPDs? Although these services are just emerging, we seek comment on what impact, if any, they have on competition in the MVPD market.

M. Foreign Markets

85. We invite comment on the status of competition in foreign markets for the delivery of video programming to provide insight into the nature of competition in the United States and relative efficiency of market structures and regulations within the United States. In the *2004 Report*, we examined developments with video over IP broadband and the transition to digital television in Germany and other European countries. This year we would like to continue our examination of these developments. We seek current information and case studies on video delivery in foreign markets. Specifically, we seek information regarding the differences between the United States and other markets in the distribution of video programming, including developments in video over IP, the digital television transition, and broadcast, cable and satellite competition. We seek data regarding adoption rates for these video distribution platforms. What technology platforms are in ascendance? What regulatory models are associated with increased levels of competition in foreign markets? We seek input from video distributors operating both in the United States and in foreign markets. How do different regulatory approaches affect their business models?

III. PROCEDURAL MATTERS

86. *Authority*. This *Notice* is issued pursuant to authority contained in Sections 4(i), 4(j), 403, and 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 403, and 548(g).

87. *Ex Parte Rules*. There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 C.F.R. § 1.1204(b)(1).

88. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on the Notice of Inquiry, MB Docket No. 05-155, on or before September 19, 2005, and reply comments on or before October 3, 2005. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers*: Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/ or the Federal eRulemaking Portal: http://www.regulations.gov. Filers should follow the instructions provided on the website for submitting comments.
    - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- *Paper Filers*: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

  Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

  - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

  - U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

89. *People with Disabilities*: Contact the FCC to request materials in accessible formats (Braille, large print, electronic files, audio format, etc.) by e-mail at fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

90. The Media Bureau contact for this proceeding is Timothy May at (202) 418-2330, or Timothy.May@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

STATEMENT OF COMMISSIONER MICHAEL J. COPPS

Re: Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

This NOI launches a report that serves as the factual foundation for numerous Commission decisions and also provides Congress with information it requires to inform the national policy debate. That's why it is incumbent upon the Commission to put our best foot forward here, to gather complete and accurate data, and then to commit the resources needed to analyze the data.

I am pleased that this year's Notice builds on the discussions from previous Reports. With the information sought by this Notice, we have the potential to increase our understanding of the market and the consequences for consumers at a time when we are seeing not only new services, technological advances and expanding competition, but also continuing rate increases. I also hope this year's Report will expand the discussion begun last year of, among other things, issues specific to video program distribution in rural America and an examination of foreign markets. With video programming, just as with broadband, we may gain insights and learn a lesson or two from what other countries are doing.

As in past years, the Commission states that it intends to rely on publicly available data, filings in various Commission proceedings, and information submitted by commenters in response to this Notice of Inquiry. However, if these sources do not provide sufficient information for us to meet our statutory obligations, the Commission may need to undertake a more proactive effort to obtain independent, verified data. Such an effort may be necessary to satisfy Congress' directive and fulfill our mission as the government's expert agency on these issues. Nevertheless, my hope is that this Notice will elicit informed and comprehensive responses that will allow us to complete our job. I thank the Bureau for its work and for the improvements to this item and I look forward to working with my colleagues to fashion the next Report.

STATEMENT OF COMMISSIONER JONATHAN S. ADELSTEIN

Re: Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Notice of Inquiry

I support this Notice, which seeks to gather data, information, comments and analyses for the Commission to use in compiling our 12th annual report to Congress on the status of competition in the delivery of video programming market. Video programming delivery involves an intricate web of relationships that requires close monitoring to ensure fair competition, consumer choices, lower prices, better services, and diverse sources. Congress foresaw the need for the Commission to monitor such competition vigilantly.

Today's Notice is a comprehensive and appropriate way to start. It contains meaningful questions which, if answered fully and accurately, would be useful for the Commission in fulfilling our statutory duty. I'm particularly pleased that we have language in this Notice that addresses pertinent issues facing rural and smaller markets, and, for the first time, encourage state and local regulators to make thorough and substantive submissions for our consideration. It's also appropriate that the Commission branch out and report on horizontal concentration within the industry, vertical integration between distributors and programmers, and the state of competition in foreign markets for the delivery of video programming.

Given the technological transformations upon us, it is more important than ever that the Commission gather the necessary information on which we and the Congress can make appropriate policy determinations. For example, the Notice seeks information regarding local exchange carriers that intend to provide video programming services. Many in Congress have been asking for a deeper understanding of the factors that underlie IP-based video networks, franchise fees, and the consequences for consumers.

In the past, I have expressed concern with the analytical depth of some of the information that the Commission has presented in the past. This year, we should again strive to make sure that we are doing all that an expert agency can to adequately grasp and relay to Congress the dynamic aspects of the video programming delivery market.